

In the Matter of the Compensation of
CECILIA AVILA-MORALES, Claimant

WCB Case No. 21-02462, 20-03864

ORDER ON REVIEW

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Reviewing Panel: Members Curey and Ousey.

Claimant requests review of that portion of Administrative Law Judge (ALJ) Fleischman's order that upheld the Arzbro Co./SAIF Corporation's (SAIF's) denial of her new/omitted medical condition claim for right bicipital tendinitis.¹ On review, the issue is compensability. We affirm.

FINDINGS OF FACT

We adopt the ALJ's "Findings of Fact" with the following summary and supplementation.

Claimant is 50 years of age. (Ex. 2). She was employed by Arzbro Co. as a housekeeper from approximately 2009 until 2015. (Exs. 6-1, 28-4; Tr. 10). She has been employed by Pacific Motion LLC as a sewer since 2015. (Exs. 22, 28-4; Tr. 8-9).

On December 27, 2011, claimant was seen by Mr. Jones, a nurse practitioner. (Ex. 1). She reported right hand numbness and tingling for the past two years at work, recently worsened, with pain into her shoulder. (Ex. 1-1-2). Mr. Jones diagnosed carpal tunnel syndrome, and recommended a wrist splint and a nerve conduction study. (*Id.*)

On December 28, 2011, claimant filed a claim for a right wrist condition. (Ex. 2). SAIF accepted the claim for right carpal tunnel syndrome. (Ex. 9).

Claimant was seen by Ms. Marik, a nurse practitioner, for right hand numbness and tingling on January 12 and January 25, 2012. (Exs. 3, 5). Ms. Marik diagnosed carpal tunnel syndrome. (Exs. 3-3, 5-3).

¹ That portion of the ALJ's order involving Pacific Motion LLC/SAIF is not at issue. Accordingly, Arzbro Co./SAIF will hereafter be referred to as "SAIF."

Dr. Nino, a neurologist, performed electrodiagnostic studies on January 18, 2012. (Ex. 4). Claimant's symptoms included pain, numbness, and tingling in her right hand, as well as pain in her neck, right shoulder, and upper arm. (Ex. 4-1). Dr. Nino concluded that the EMG findings were consistent with a right carpal tunnel syndrome condition. (Ex. 4-2). He subsequently indicated that claimant would likely need a surgical decompression for her right carpal tunnel syndrome. (Ex. 7-2).

Dr. Denekas, a neurologist, evaluated claimant at SAIF's request on January 25, 2012. (Ex. 6). Claimant's symptoms included right thumb pain and occasional pain in her entire right arm. (Ex. 6-1). Dr. Denekas noted tenderness to palpation over claimant's right trapezius and right biceps tendon. (Ex. 6-4). He diagnosed right carpal tunnel syndrome and right biceps tendinitis, and opined that claimant's work activities with Arzbro Co. significantly contributed to both conditions. (Ex. 6-5-6). Dr. Denekas was asked if the work activities were the major contributing cause of claimant's right wrist condition, and he agreed. (Ex. 6-6). With respect to claimant's right wrist condition, he recommended a surgical consultation, continued wrist bracing, and a reduction of activities. (*Id.*)

Claimant ultimately declined surgical treatment for her right wrist in 2012. (Exs. 15-1, 34-2).

Claimant was seen by multiple providers for right hand and wrist conditions between February 2012 and July 2020. (Exs. 8, 10-17, 19, 21, 24, 26-27, 32). No provider diagnosed right bicipital tendinitis. (*Id.*)

Dr. Bell, an orthopedic surgeon, examined claimant at SAIF's request on April 15, 2021. (Ex. 34). Claimant had no right shoulder symptoms, and advised Dr. Bell that she had "never had a problem with her right shoulder" and was "unaware of ever having or being treated for a problem in her right shoulder." (Ex. 34-2). Dr. Bell found no right shoulder or biceps tendon tenderness during examination. (Ex. 34-5). He opined that claimant did not have a right bicipital tendinitis condition. (Ex. 34-8).

On April 22, 2021, SAIF denied a new/omitted medical condition claim for right bicipital tendinitis with respect to claimant's December 2011 claim. (Ex. 36). Claimant requested a hearing.

CONCLUSIONS OF LAW AND OPINION

In upholding SAIF's denial of right bicipital tendinitis, the ALJ determined that there were no "objective findings" supporting the diagnosis.

On review, claimant asserts that Dr. Denekas's finding of biceps tendon tenderness to palpation in 2012 constituted an "objective finding," and that Dr. Denekas's opinion persuasively establishes the compensability of the claimed condition. Based on the following reasoning, even assuming that Dr. Denekas's finding of tenderness constituted an "objective finding," the record does not persuasively establish that the claimed right bicipital tendinitis condition is compensable.

There is no dispute that the claimed right bicipital tendinitis condition should be evaluated as an occupational disease. To establish the compensability of her new/omitted medical condition claim as an occupational disease, claimant must prove that the right bicipital tendinitis exists and that employment conditions were the major contributing cause of the disease. ORS 656.266(1); ORS 656.802(2)(a); *Eric Cooke*, 74 Van Natta 467, 470 (2022); *Maureen Y. Graves*, 57 Van Natta 2380, 2381 (2005). A compensable injury or occupational disease must also result in either a need for medical services, disability, or death. ORS 656.005(7)(a); ORS 656.802(1)(a); *see, e.g., Andrew C. Shipley*, 53 Van Natta 745, 746 (2001) (the claimant's new/omitted medical condition claim was not compensable because the claimed condition did not require medical services).

Here, right biceps tendinitis was diagnosed by a single examining physician in 2012. (Ex. 6-5). Dr. Denekas did not recommend treatment for the condition. Additionally, the record does not establish that claimant's treating physicians either diagnosed or treated right bicipital tendinitis at any point. Rather, claimant's physicians have exclusively diagnosed and treated right hand and wrist conditions. (Exs. 1, 3-5, 7, 8, 10-17, 19, 21, 24, 26, 27, 32). Claimant denied prior right shoulder treatment at the time of Dr. Bell's April 15, 2021, examination, and her testimony does not indicate that she ever required treatment for a right bicipital tendinitis condition. (Ex. 34-2).

Based on the aforementioned reasoning, the record does not establish that the claimed right bicipital tendinitis condition required medical services or resulted in disability or death. Under such circumstances, the claim is not compensable. ORS 656.802(1)(a); *compare Shipley*, 53 Van Natta at 746. Accordingly, we affirm the ALJ's order.

ORDER

The ALJ's order dated July 12, 2022, is affirmed.

Entered at Salem, Oregon on March 13, 2023